

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

GEORGE F. RATHY, SR.,)
v.)
Plaintiff,) Civil Action No. 13-72
JOHN E. WETZEL, *et al.*,) District Judge Cathy Bissoon
Defendants.) Chief Magistrate Judge Lisa Pup Lenihan

ORDER

Defendants Suvorov and Morgan have filed Motions to Dismiss Plaintiff's Third Amended Complaint (ECF Nos. 57, 59). One of their arguments in support of dismissal is that Plaintiff failed to exhaust his administrative remedies before filing suit as required by the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a).

**THE PARTIES ARE HEREBY NOTIFIED THAT THE PENDING MOTIONS
WILL BE TREATED AS MOTIONS FOR SUMMARY JUDGMENT UNDER FEDERAL
RULE OF CIVIL PROCEDURE 56 WITH RESPECT TO THE ISSUE OF PLAINTIFF'S
EXHAUSTION OF ADMINISTRATIVE REMEDIES. *See* Renchenski v. Williams, 622 F.3d 315 (3d Cir. 2010).**

Plaintiff is advised that in treating the motions to dismiss as motions for summary judgment on this issue, the motions will be evaluated under the standard set forth in Rule 56 of the Federal Rules of Civil Procedure. Plaintiff is on notice that failure to respond to the pending motions may result in the entry of judgment against him.

AND NOW, this 19th day of February, 2014:

IT IS HEREBY ORDERED that no formal discovery, such as interrogatories, requests for production or requests for admission will be allowed in this case without leave of court.

However, no later than March 12, 2014, moving Defendants shall provide Plaintiff with the following: all incident reports, grievances, disciplinary reports, investigative reports, appeals, or other similar documents in its possession concerning the alleged incident or incidents. Plaintiff may not submit requests for discovery to the Defendants without leave of court.

IT IS FURTHER ORDERED that Plaintiff shall be allowed until April 9, 2014, to respond to moving Defendants' Motions for Summary Judgment concerning the exhaustion issue and also the remaining issues in the Motions to Dismiss.

IT IS FURTHER ORDERED that no extensions will be granted without just cause.

IT IS FURTHER ORDERED that Plaintiff is advised that his response to the motion may include opposing or counteraffidavits (executed by the plaintiff or other persons) which have either been sworn to under oath (notarized) or include at the end of the document, immediately before the plaintiff's signature, the following in accordance with 28 U.S.C. § 1746: "I declare under penalty of perjury that the foregoing is true and correct. Executed this ___ day of ___ , 2013."

IT IS FURTHER ORDERED that all affidavits, opposing or counteraffidavits must be based upon the personal knowledge of the person executing the affidavit; that no affidavit, amended complaint, pretrial narrative or other document containing Plaintiff's allegations will be considered when determining the motion for summary judgment unless it has been notarized before a notary public or unless it contains a declaration under penalty of perjury as set forth above; that plaintiffs may attach to their affidavits copies of any depositions, answers to interrogatories, institutional records or other documents they wish this court to consider when addressing the summary judgment motion; and that the motion for summary judgment will be

evaluated under the procedure standard set forth in Rule 56 of the Federal Rules of Civil Procedure; and that failure to respond may result in entry of judgment against them.

IT IS FURTHER ORDERED that Plaintiff shall serve on counsel for Defendant a copy of each pleading or other document submitted for consideration by the court and shall include with each document filed a certificate stating the date a true and correct copy of the pleading or document was mailed to each attorney. Any pleading or other document received by a district judge or magistrate judge which has not been filed with the Clerk or which fails to include a certificate of service shall be returned to Plaintiff by the Clerk.

IT IS FURTHER ORDERED that should Plaintiff fail to comply with this order, the motions will be decided without the benefit of Plaintiff's response and the Court will consider dismissal of this action for failure to prosecute.

IT IS FURTHER ORDERED that, in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(A), and the Local Rules of Court, the parties are allowed fourteen (14) days from the date of issuance of this Order to file an appeal to the District Judge, which includes the basis for objection to this Order. Any party opposing the appeal shall have fourteen (14) days from the date of service of the notice of appeal to respond thereto. Failure to file a timely notice of appeal will constitute a waiver of any appellate rights.

/s/ Lisa Pupo Lenihan
Lisa Pupo Lenihan
Chief United States Magistrate Judge

Cc: George F. Rathy, Sr.
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